Case Nos. B025920 & B038975

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

9-14-91

and

MARY SUE HUBBARD

Intervenor-Plaintiff-Appellant,

v.

GERALD ARMSTRONG,

Defendant-Respondent.

NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG

Appeal from the Superior Court of the State of California for the County of Los Angeles
Honorable Bruce R. Geernaert, Judge
Case No. C420153

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

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DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff-Appellant, and MARY SUE HUBBARD, v. GERALD ARMSTRONG, Defendant-Respondent.	Case Nos. B025920 & B038975 LASC No. C420153 NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG

Plaintiff Church of Scientology of California ("CSC") and Intervenor Mary Sue Hubbard ("Mrs. Hubbard") hereby move the Court for an order sealing portions of the record on appeal.

This motion to seal is made on the ground that the case was filed to vindicate property and privacy interests that had been invaded by defendant, and to leave these portions of appellate record unsealed will result in further violations of those interests. In addition, the trial court found that documents in issue in this case were stolen from plaintiff, and that CSC "had made out a prima facie case of conversion, breach of fiduciary duty, and breach of confidence, and that Mary Sue Hubbard had made out a prima facie case of conversion and invasion of privacy." When the case was settled in December 1986, the parties entered into a stipulation that the court

files would be sealed, and the July 29, 1991 decision of this Court upheld the validity of that stipulation against a challenge by an individual who was not a party to the underlying action, and ruled that the files below should remain sealed pursuant to agreement of the parties upon settlement. This action was the only method available to appellants to protect their rights, and the sealing of the files is therefore proper.

This motion is based on this notice of motion and motion, the attached Declaration of Kenneth Long, the attached Memorandum of Points and Authorities, the Brief of Appellants, Reply Brief of Appellants and Response to Cross Appeal, the record on appeal and the briefs on file herein.

DATED: September 11, 1991

Respectfully submitted,

Eric M. Lieberman
RABINOWITZ, BOUDIN,
STANDARD, KRINSKY &
LIEBERMAN, P.C.

BOWLES & MOXON

By: Helena K. Kobrin
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Appellant MARY SUE HUBBARD

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I.

PRELIMINARY STATEMENT

On July 29, 1991, this Court issued its decision in this case reversing an Order of the trial court unsealing the file in Church of Scientology of California v. Armstrong (B038975). The Court ruled that the trial court files were to remain sealed, but also ruled that "plaintiffs have not formally requested sealing of the record on appeal," and left it open for them to do so. (Decision at 18-19.) Appellants hereby accept that invitation and request that the Court order portions of the appellate record sealed as well.

The full record below has been sealed since December 1986 based upon stipulation of the parties at the time of settlement. Prior to that time, the underlying documents which are the subject matter of this suit were sealed during the pendency of the case because of their confidential nature. The trial court has ruled that defendant's actions with respect to the documents constitute conversion, breach of fiduciary duty, and breach of confidence with respect to plaintiff, and conversion and invasion of privacy with respect to Intervenor Mary Sue Hubbard. The appellate record is permeated with references to and discussions of the stolen documents throughout. Under these circumstances, it is appropriate for the Court to order portions of the record on appeal sealed.

II.

THE FACTS OF THIS CASE PROVIDE AMPLE CRITERIA UPON WHICH A SEALING ORDER CAN BE MADE

The documents in this case were kept in the court files

under seal from shortly after the inception of this lawsuit. At that time, Judge Cole of the Superior Court issued a temporary restraining order and then a preliminary injunction requiring defendant to deposit the documents which he had converted from plaintiff with the clerk of the court under seal. They remained under seal up to the time of trial, and many of them continued to be sealed after that time.

Appellants' claims in this case were tried before Judge Breckenridge without a jury in May 1984. At trial, appellants presented their case without introducing any of the private documents so as not to undermine the very privacy rights they brought suit to protect. Nonetheless, at the close of trial, at Armstrong's request, and over appellants' objections, the court admitted into evidence and ordered unsealed a small percentage of the thousands of documents held under seal by the clerk on the ground that they were relevant to Armstrong's defense. These documents were unsealed, and quotations from them and information derived from them entered the trial transcript and pleading file of the case.

On June 20, 1984, Judge Breckenridge issued a Memorandum of Intended Decision, (Exhibit A), which became a Statement of Decision by Minute Order dated July 20, 1984. (Ex. B.) The decision included findings of liability on the part of Armstrong for conversion, breach of fiduciary duty, breach of confidence and invasion of privacy. Judge Breckenridge's Decision ordered certain documents the court had admitted into evidence to be unsealed, but a series of appeals effectively kept these papers under seal until December 1986, when they

were returned to CSC as part of the settlement agreement described below.

After lengthy negotiations, the parties presented Judge Breckenridge on December 11, 1986, with a settlement of Armstrong's countersuit and the injunctive portion of appellants' claims against Armstrong. The injunctive claims were mooted by the return to plaintiff of all but six of the documents which were kept in the court's files because they were in controversy in pending litigation in another case. The returned documents included all documents that had been entered into evidence. An integral, indispensable part of that settlement was the sealing of the court's record[1/] and the stolen documents still held by the court.

The sealing aspect of the settlement was documented in the stipulated Sealing Order executed and entered by Judge Breckenridge on December 11, 1986, (Ex. C):

> The entire remaining record of this case, save only this order, the order of dismissal of the case, and any orders necessary to effectuate this order and the order of dismissal, are agreed to be placed under the seal of the Court.

Ex. C at 2. The cross-complaint was dismissed with prejudice by Judge Breckenridge on that same day, December 11, 1986. (Order Dismissing Action With Prejudice, Ex. D.)

On October 11, 1988, almost two years after the settlement of the case and sealing of the record, non-party Bent Corydon filed his motion to unseal the file. Los Angeles

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1. Because of the court's evidentiary rulings, quotations and information from the private documents did appear in the transcript of the trial and the pleading file.

Superior Court Judge Geernaert went far beyond what Corydon requested and ordered the files totally unsealed. In its July 29, 1991 decision, this Court ruled that the unsealing by Judge Geernaert had been improper, and ordered the files resealed. The Court ruled, however, that the appellate files were not to be sealed, but that plaintiff could move for a sealing order.

The record on appeal consists of various categories of documents, primarily the trial transcripts, trial exhibits, including those which were sealed documents which Judge Breckenridge allowed into the trial record, and briefs discussing those exhibits in detail. Because of the findings of the trial court with respect to appellants' prima facie case against defendant on several causes of action, the fact that the documents involved were stolen from plaintiff in the first place, the permeation of the record with the documents or discussion of them, and the negotiated agreement of the parties that the record be sealed, it is appropriate for this Court to seal portions of the record on appeal as well.

III.

THE APPLICABLE LEGAL STANDARDS PERMIT SEALING OF THE COURT FILE IN THIS CASE

The United States Supreme Court has long recognized as an "uncontested" proposition that "the right to inspect and copy judicial records is not absolute" and that "every court has supervisory powers over its own records and files. . . . " Nixon v. Warner Communications, Inc. (1978) 435 U.S. 589, 598, 98 S.Ct. 1306; see, Champion v. Superior Court (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, 629, quoting in

Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 783, 136 Cal.Rptr. 821, 824 ("Clearly a court has inherent power to control its own records to protect the rights of litigants before it. . . ."). The Supreme Court has explained that denial of access to judicial records may be appropriate in a variety of situations, including for the protection of privacy interests. Nixon v. Warner Communications, 435 U.S. at 598.

When the Court rendered its decision in this case, its discussion of the sealing of appellate files relied on Champion v. Superior Court (1978) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, a recent case which expounded criteria for the sealing of a record on appeal or portions thereof. The court in Champion noted that the California Rules of Court provided no guidance for its decision, but that appellate courts could adapt to their use the procedures outlined in cases discussing trial court sealing orders. Based upon those cases, the court ruled that parties seeking a sealing order should segregate the documents which should be sealed from those which should not, and should present a factual declaration which explains the needs of the particular case. Id. at 788, 247 Cal.Rptr. at 630. Any such sealing request was itself required by the Champion court to be filed publicly. The arguments in support of sealing were to be presented in a general, non-confidential manner to the extent possible. Id. at 788-789, 247 Cal.Rptr. at 631.

The Court in Champion quoted the opinion in Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 782-783, 136 Cal.Rptr. 821, 824, where the general rule was stated that

public records should be kept open to the public, but that "countervailing public policy might come into play as a result of events that tend to undermine individual security, personal liberty, or private property, or that injure the public or the public good." A number of factors in this case militate in favor of a conclusion that the record on appeal should be sealed based on such considerations.

First, this case involves property and privacy rights of plaintiff and Intervenor Mary Sue Hubbard, as found by the trial court, which fall within the category of "countervailing public policy." The case arose because defendant violated those rights by stealing the proprietary documents, to which he had no legal right. That this is such a case is one factor warranting the sealing of the files. The nature of the documents stolen -- consisting of personal, private, confidential and nonpublic documents -- is a second factor which lends itself to a conclusion that the files should be sealed.

The public policy implications of an unsealing are underscored by the constitutional protection which the right of privacy is afforded in California; see California Constitution, Article 1, § 1, against both governmental and nongovernmental invasions. Porten v. University of San Francisco (1976) 64 Cal.App.3d 825, 829, 134 Cal.Rptr. 839, 841-42. California, in fact, provides broader constitutional protection for privacy rights than does the federal constitution. See, City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123, 130 n.3, 164 Cal.Rptr. 539, 543 n.3. Personal documents and

information derived from them clearly are protected by the right of privacy in California. E.g., City of Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 268, 85 Cal.Rptr. 18; Division of Medical Quality v. Gherardini (1979) 93 Cal.App.3d 669, 678, 156 Cal.Rptr. 55, 60-61.

When a constitutional right to privacy is implicated, the courts do not merely balance that right against the right of access to records. Rather, in such cases the judicial records are presumptively placed under seal. See, Richards v. Superior Court (1978) 86 Cal.App.3d 265, 150 Cal.Rptr.77 (party producing private financial information through discovery is presumptively entitled to a protective order limiting disclosure only to counsel for the other party and only for use in that litigation). Only specific, compelling state interests can overcome that presumption -- and those interests must be expressly articulated by the trial court. See, id. at 272, 150 Cal.Rptr. at 81 ("substantial reason ... related to the lawsuit" is required for disclosure); Britt v. Superior Court (1978) 20 Cal.3d 844, 856 n.3, 143 Cal.Rptr.695, 702 n.3, 574 P.2d 766; Gunn v. Employment Development Dep't. (1979) 94 Cal.App.3d 658, 156 Cal.Rtpr. 584.

Privacy rights, along with trade secrets and other limited types of rights, have long been held to warrant sealing of records. See, e.g., Nixon v. Warner Communications, Inc., 435 U.S. at 598; Brown & Williamson Tobacco Corp. v. F.T.C. (6th Cir. 1983) 710 F.2d 1165, 117 cert. denied, 465 U.S. 1100 (1984).

In the analogous area of trade secrets, it is routine for

courts to seal judicial records, in order to:

> [P]rotect the very rights which parties have filed suit to vindicate. The most thorough review of the decisional law in this area states that the object of such safeguarding procedures is, of course, to prevent, so far as possible, the litigation designed to enforce rights in the trade secret from being itself destructive of secrecy and the value of the subject matter of the litigation.

Annot. 62 A.L.R.2d 509, 513. Thus, cases are legion in which courts have ordered that testimony and exhibits regarding business secrets be submitted in camera, sealed and impounded. E.g., A.O. Smith Corp. v. Petroleum Iron Works Co. (6th Cir. 1934) 73 F.2d 531, 539 note, modified on other grounds (6th Cir. 1935) 74 F.2d 934 (trial and appellate records sealed); Vitro Corp. v. Hall Chemical Co. (6th Cir. 1958) 254 F.2d 787, 788 (affirming trial court order impounding transcripts, exhibits and briefs).

Judge Breckenridge was aware in entering the sealing order that the privacy interest of appellants was exceptionally strong. He specifically found that appellants proved a prima facie case of conversion and invasion of privacy. They sought and obtained the sealing order to protect private information quoted or derived from their documents which had been admitted into evidence over their objection. Privacy rights in personal documents and information are entitled to constitutional protection in California. See, e.g., City of Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 268, 85 Cal.Rptr. 18; California Constitution, Article 1, § 1; Porten v. University of San Francisco (1976) 64 Cal.App.3d 825, 829, 134 Cal.Rptr. 839, 841. Appellants' privacy

interest in this material will be irreparably harmed if the entirety of the court file is opened to the public.

Numerous courts and commentators have inveighed against such a perverse judicial exacerbation of the very intrusion that a plaintiff seeks to remedy. In United States v. Hubbard (D.C.Cir. 1981) 650 F.2d 293, the Court of Appeals reversed a trial court's order unsealing private Church of Scientology documents. The single most important element in the Court of Appeals decision was the fact that the documents had been introduced as exhibits in a hearing brought on -- as in the instant case -- for the very purpose of protecting defendants' constitutional and common law right of privacy. The court noted that it would be ironic indeed if "one who contests the lawfulness of a search and seizure were always required to acquiesce in a substantial invasion of those privacy interests simply to vindicate them." Id. at 321. The court's order to continue the seal was thus intended to neutralize the "untoward" fact that the mere "initiation of a privacy action itself involves the additional loss of privacy" and "normally multiplies the very effect from which relief is sought." Id. at 307 n.52 (quoting Gavison, Privacy and the Limits of the Law, 89 Yale L.J. 421, 457 (1980), and Emerson, The Right of Privacy and Freedom of the Press, 14 Harv. C.R. - C.L.L. Rev. 329, 348 (1979), respectively). In the instant case, this "most important element" is even more compelling. Appellants here made every effort to vindicate their privacy interests without doing them further damage. Whereas in Hubbard, the documents

were introduced into evidence by the proponents of confidentiality, in this case the proponents opposed the introduction of the documents. Perhaps even more important, while the documents in Hubbard were lawfully seized pursuant to a judicially authorized search warrant, the documents in this case were unilaterally "seized" by a private individual without probable cause and without prior judicial review. The intrusion on privacy is therefore more severe -- and any countervailing justification for publicizing the documents and court records reflecting information from them is correspondingly weaker.

The record on appeal in this case consists of the trial transcripts, the documents constituting the appendix, and the various briefs filed in connection with the appeal. Many of these documents contain some discussion of the converted documents which were sealed by the trial court, as discussed in greater detail in the declaration of Kenneth Long, the individual who worked as CSC's representative in connection with this case, and who is familiar with the appellate record. Because of the compelling reasons discussed herein, and particularly the fact that many of the documents in the appellate record, other than the briefs, are the same documents that have been sealed below for nearly five years, portions of the appellate record should also be sealed.

Another compelling factor warranting sealing of the record on appeal is the fact that there was a negotiated settlement between the parties which provided for sealing and was approved by the trial court, and weighs heavily in favor of sealing of the

identical documents which exist in the appellate record. It is the policy of California's courts to encourage settlements and to enforce judicially supervised settlements. Phelps v. Kozakar (1983) 146 Cal.App.3d 1078, 1082, 194 Cal.Rptr. 872, 874; Fisher v. Superior Court (1980) 103 Cal.App.3d 434, 437, 440-441, 163 Cal.Rptr. 47, 49, 52. The acceptance of orders sealing judicial records as necessary and proper provisions of settlement agreements is supported by reported cases containing references to such orders without criticism or comment. See, e.g., Champion v. Superior Court (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, 628 (requiring an assertion of need for continued sealing when documents are submitted to be sealed in the appellate court); Owen v. United States (9th Cir. 1983) 713 F.2d 1461, 1462.

In In re Franklin National Bank Securities Litigation (E.D.N.Y. 1981) 92 F.R.D. 468, aff'd sub nom. Federal Deposit Insurance Corp. v. Ernst & Ernst (2nd Cir. 1982) 677 F.2d 230 the confidentiality order -- insisted on by one party -- was a critical factor in the settlement of the case. Two years after the case was settled and the order was entered, a non-party moved to intervene to request that the order be modified. The district court held that the "strong public policy favoring settlements of disputes" and "the importance of the stability of judgments and settlements, argue strongly against modification of the order," and that the "[l]apse of time also works against intervenors' position." 92 F.R.D. at 472. The court stated:

> The settlement agreement resulted in the payment of substantial amounts of money and

> induced substantial changes of position by many parties in reliance on the condition of secrecy. For the court to induce such acts and then to decline to support the parties in their reliance would work an injustice on these litigants and make future settlements predicated upon confidentiality less likely.

Id. at 472. The principles which underlie the ruling in the Franklin litigation apply as well to the sealing of portions of the appellate court file. Other parties to the lawsuit reached a partial settlement of the case -- which included a monetary settlement of Armstrong's cross-complaint for monetary damages -- in reliance on the order sealing the file. For the same documents which were sealed as a result and other documents discussing the sealed papers, created in relation to the appeal, to be unsealed in the appellate court, works a serious injustice on the plaintiffs.

Indeed, a similar situation to this case was presented most recently to the Eleventh Circuit Court of Appeals in Wakefield v. Church of Scientology of California (11th Cir. 1991) ___ F.2d ___, Slip.Op. 4625 (Exhibit E). In that case, plaintiff Wakefield settled a case with defendant Church, and then repeatedly violated her settlement agreement by violating its confidentiality provisions. The Church brought contempt proceedings against Wakefield, and sought to have the proceedings in camera, in order to protect the very privacy rights placed at issue by Wakefield's conduct. According to the Eleventh Circuit, the district court ordered that contempt proceedings commence before a magistrate, and closed the proceedings to the public and the press stating:

> [D]ue to plaintiff's complete and utter

> disregard of prior orders of this court, the court concludes that any restriction, short of complete closure would be ineffective. . . . Publicity of a private crusade has become her end, not the fair adjudication of the parties' dispute. In doing so, plaintiff is stealing the court's resources from other meritorious cases.

Ex. E, Slip.Op. at 4627.

Various newspapers protested and appealed the closure order. At the conclusion of the closed proceedings, the magistrate found that Wakefield had wilfully violated the court's injunction, and recommended criminal contempt proceedings. The district court granted the newspapers access to some of the transcripts of the hearings, but refused to permit them access to those which discussed the terms of Wakefield's settlement agreement -- that is, those portions of the proceedings which were permeated with discussions of matters which Wakefield and the Church had agreed to keep confidential, and which the Church had brought contempt proceedings to protect. On appeal by the newspapers, the Eleventh Circuit upheld the privacy interests which the Church sought to protect, and refused to grant public access to any more of the record. Id. at 4629 - 4630.

Wakefield demonstrates that the deliberate interjection into judicial proceedings of matters which are unequivocally private to one of the parties, by a recalcitrant litigant who refuses to bend to the orders of the court, should not and must not be permitted to subvert the constitutional protections of the privacy interests of innocent litigants. So, here, this Court should not permit the litigation surrounding the Church's demonstrated privacy interests to subvert their ultimate

protection.

In this case, the trial judge, Judge Breckenridge, in his sound discretion, ordered the sealing of the trial record to facilitate a settlement of this case and to permit appellants to achieve the bargained-for benefit in privacy and property for which they brought the underlying lawsuit. The bargain of the parties which this Court found was to be upheld, not having been challenged for two years after its negotiation and effectuation, is rendered somewhat meaningless if the appellate files are not sealed. If the filing of an appeal to vindicate the right to have files remain sealed results in a ruling that the files are to be sealed in one court but not in another, then the right is nugatory. The challenge of a private litigant two years after the sealing agreement did not make appropriate the unsealing of the files below. It should not do so in this Court either.

Finally, the fact that appellants here were obliged to use the courts to protect their privacy interests is further reason to impose a seal on the appellate record here. In Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 136 Cal.Rptr 821, the court emphasized that the family had alternatives to reliance on the courts and could have "eschew[ed] court-regulated devices for transmission of inherited wealth and rel[ied] on private arrangements such as inter vivos gifts, joint tenancies, and so-called 'living' or grantor trusts." Id. at 783-84, 136 Cal.Rptr. at 824. The appellants here had no such alternatives for private action. They had no mechanism for recovery of the converted documents other than

bringing this lawsuit. Self-help, in the form of "seizing the documents from Armstrong," was certainly not appropriate, and no court would wish to encourage such action by penalizing a party for seeking to preserve its privacy rights through the courts.

Consideration of the factors above warrants that sealing of the appellate file should be granted. Accordingly, this Court should seal those portions of the appellate record designated in paragraph 8 of the attached Declaration of Kenneth Long.

IV.

CONCLUSION

This case arises out of the wrongdoing of defendant in converting private documents, invading the privacy of Intervenor Mary Sue Hubbard, breaching confidences, and breaching his fiduciary duty to plaintiff. Thus, from its inception, the case deals with violations of plaintiff's and Intervenor's rights. This suit was the only method of vindicating those rights, and it resulted in some of the confidences sought to be protected being revealed in documents which would ordinarily be public. The parties settled the suit and stipulated to the sealing of the files, and the trial court approved that settlement. The fact that this appeal has been filed should not negate the privacy and property interests involved, which weigh heavily in favor of a conclusion that all portions of the record containing stolen documents or

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portions or discussions of them should be sealed both in the trial court and on appeal.

Dated: September 11, 1991

Respectfully submitted,

Eric Lieberman
RABINOWITZ, BOUDIN, KRINSKY,
STANDARD & LIEBERMAN, P.C.

BOWLES & MOXON

By: Helena K. Kobrin
Helena K. Kobrin

Counsel for Plaintiff and
Appellant

MICHAEL LEE HERTZBERG
Counsel for Intervenor and
Appellant MARY SUE HUBBARD

DECLARATION OF KENNETH LONG

I, KENNETH LONG, hereby declare:

1. I am over the age of eighteen. I have been employed by Church of Scientology of California ("CSC") for 9 years as a paralegal, acting as CSC's representative to assist various of its attorneys during that time period. I have personal knowledge of the matters set forth below and would and could competently testify thereto if called upon to do so.

2. During the course of my employment as a paralegal, I have worked extensively on the case of Church of Scientology of California v. Armstrong, Los Angeles Superior Court Case No. C 420153, and Appellate Case No. B025920 ("Armstrong"). I am well familiar with the documents on file in Armstrong, both in the Superior Court and on appeal.

3. The trial transcripts which are part of the Armstrong record consist of 4,346 pages of testimony. The single lengthiest testimony is that of defendant, Gerald Armstrong. His testimony covers approximately 852 pages. Throughout Armtrong's testimony, there was discussion of the documents converted by Armstrong that had been ordered returned to the court and sealed by Judge Cole near the inception of the suit.

4. Discussion of the contents of these documents also occurred during the testimony of other witnesses. Vaughn Young testified for about 136 transcript pages and Laurel Sullivan for roughly 425 pages. Their testimony also included discussion of the stolen documents which had been sealed by the trial court. Thus, between Armstrong, Sullivan and Young,

nearly a third of the trial transcripts contain discussions of the very materials for which suit was originally brought to effect return and maintain privacy.

5. The Armstrong appellate briefs also contain many references to, and descriptions and discussions of the stolen documents which were sealed during this litigation and which were returned to plaintiff upon settlement of the lawsuit in December 1986. A material term of that settlement was the return of those documents and the sealing of the record in this case in order to protect the privacy and property interests of CSC and Intervenor Mary Sue Hubbard, who had initiated this action to vindicate those rights.

6. The appendices filed in the appellate court contain numerous documents that discuss the stolen documents and their contents, or matters arising from those documents. Out of 22 documents in the B038975 appendix, ten contain such references: Exhibits C, H, I, K, L, N, O, Q, U, and V. The appendix for B025920 also contains documents with such references, including pages 57-60 and 251-277.

7. All of the documents in the Armstrong appellate record, with the exception of the appellate briefs, have been sealed below since December 11, 1986 as a result of the stipulation of the parties upon settlement of the case.

8. Accordingly, on behalf of CSC, I respectfully request the Court to seal the testimony of Gerald Armstrong, Vaughn Young and Laurel Sullivan in the Armstrong Reporter's Transcript, pages 57-60 and 251-277 in Armstrong Appellant's Appendix, pages 4-28 of Respondent's Brief in Armstrong, and

Exhibits C, K, L and N in the "Appendix of Appellants" filed in Appeal No. B038975. If these portions of the appellate record are also sealed, it will preserve the property and privacy interests which CSC has fought to protect by its filing of the Armstrong suit, and which the trial court recognized in sealing the documents at the outset of the litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California this 10th day of September, 1991.

Kenneth Long

Kenneth Long

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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. C 420153 MEMORANDUM OF INTENDED DECISION
MARY SUE HUBBARD, Intervenor.	

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may

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1. Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion

and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was t take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

"Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the

merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has

in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history,

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2. Exhibit 500-HHHHH.

background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing,

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3. See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost

4. Exhibit AAA.

lawyer-enemy.[5] However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The

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5. "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

practice of culling supposedly confidental "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

Paul G. Breckenridge, Jr.

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states

that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went

to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH'DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or

research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980,

to her in which Defendant stated, at page 7, that there were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for

Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaugh Young. Controller Archives and Guardian Office Archives had n connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds o thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted t

Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the

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massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter.

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning and that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25, 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if

disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"we are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.

"That's what I'm trying to remedy and prevent.

. . .

"To say that LRH is not capable of hype, errors or lies is certanly ^sic] not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.

. . .

". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in

his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant ARmstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set

up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church , its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on board Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos of L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he

never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventually was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway

automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the Church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.

EXHIBIT B

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Attorneys for Plaintiff and Cross-Defendant
CHURCH OF SCIENTOLOGY OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, Plaintiff, v. GERALD ARMSTRONG, Defendant. AND RELATED CROSS-ACTION.	Case No. C 420153 STIPULATED SEALING ORDER

Pursuant to and as a provision of a Settlement Agreement of the parties hereto, which is dispositive of all claims of the above captioned case, the parties hereby voluntarily enter into the following stipulation:

1. Defendant/Cross-Complainant hereby agrees that the Clerk of the Court will produce to Plaintiff/Cross-Defendant

the following records in the Custody of the Clerk:

a) All those documents surrendered to the custody of the Clerk of the Court by Michael Flynn and the law firm of Contos & Bunch in September 1982, pursuant to the Order of Judge John J. Cole in the above captioned case, dated September 4, 1982; and b) all exhibits entered into evidence or marked for identification at the trial of this case in May - June of 1984.

2. The entire remaining record of this case, save only this order, the order of dismissal of the case, and any orders necessary to effectuate this order and the order of dismissal, are agreed to be placed under the seal of the Court.

3. It is agreed between the parties that should the Court require a motion or any further pleadings to effectuate and sign this Stipulated Sealing Order, the parties will jointly comply with the Court's further orders, if any.

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4. This agreement is effective as of the date of the dismissal of this case.

DATED: 12-8, 1986

~~BRUCE~~ BUNCH JULIA DRAGOVIC
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Counsel for Plaintiff/Cross-Defendant

IT IS SO ORDERED.

/S/ PAUL G. BRECKENRIDGE, JR. DEC. 11, 1986 Dated
HON. PAUL G. BRECKENRIDGE

052

Date JULY 20, 1984 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES DEPT. 57

JUL 23 1984

HONORABLE P G BRECKENRIDGE, JR JUDGE

J ANDERSON, COURT ATTENDANT Deputy Sheriff

E HART Deputy Clerk

NONE Reporter

(Parties and counsel checked if present)

C 420 153
CHURCH OF SCIENTOLOGY OF CALIFORNIA,
VS
GERALD ARMSTRONG,

Counsel for Plaintiff

Counsel for Defendant

MARY SUE HIBBARD - INTERVENOR

NATURE OF PROCEEDINGS REQUEST OF DEFENDANT THAT MEMORANDUM BE DEEMED STATEMENT OF DECISION

Plaintiffs not having requested such, the Court grants defendant's motion, and the Memorandum of Intended Decision will henceforth be deemed the Court's "Statement of Decision".

A copy of this minute order is mailed to all counsel.

049

MINUTES ENTERED
7-20-84
COUNTY CLERK

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERALD ARMSTRONG, Cross-Complainant, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, Cross-Defendant.	No. C 420 153 (Severed Action) ORDER DISMISSING ACTION WITH PREJUDICE

ORIGINAL FILED
DEC 11 1986
COUNTY CLERK

Upon consideration of the parties' Stipulation for Dismissal, the "Mutual release of All Claims and Settlement Agreement" and the entire record herein, it is

ORDERED AND ADJUDGED:

1. That this action is dismissed with prejudice.

2. That an executed duplicate original of the parties' "Mutual Release of All Claims and Settlement Agreement" filed herein under seal shall be retained by the Clerk of this Court under seal.

Dated: December 11, 1986

/s/ PAUL G. BRECKENRIDGE, JR.
Hon. Paul G. Breckenridge

EXHIBIT E

Margery WAKEFIELD, Plaintiff,

v.

The CHURCH OF SCIENTOLOGY OF CALIFORNIA, Defendant–Appellee,

Times Publishing Company and Tribune Company, Appellants.

No. 89–3796.

United States Court of Appeals, Eleventh Circuit.

Aug. 12, 1991.

Religious organization sought orders to show cause why plaintiff, which had brought suit against organization, should not be held in civil and criminal contempt for violating confidentiality requirement of settlement agreement. Newspapers' motions for access to contempt hearings and related pleadings, proceedings, and records, to determine if their reporters' qualified privilege prevented them from being compelled to testify, was denied by the United States District Court for the Middle District of Florida, No. 82-1313 CIV-T-10, Elizabeth A. Kovachevich, J., and newspapers appealed. The Court of Appeals, Hatchett, Circuit Judge, held that newspapers' appeal from order denying them access to contempt hearings did not fall within capable of repetition, yet evading review exception to mootness doctrine.

Case dismissed.

1. Federal Courts ⇐721

Newspapers' appeal from order denying newspapers' motions for access to evidentiary hearing at which hearing newspaper reporters had been subpoenaed did not satisfy requirements for capable of repetition, yet evading review exception to mootness doctrine after hearing was held; and newspaper which had reported on case did not seek to intervene until two years after closure, and case involved unique circumstances, such as plaintiff's "constant disregard and misuse of the judicial process," on which closure order was based. U.S.C.A. Const.Amend. 1.

2. Federal Courts ⇐611

Parties may make alternative claims, change claims, or sometimes file inconsistent claims, but may not do so in appellate court, Court of Appeals reviews case tried in district court and does not try ever-changing theories parties fashion during appellate process.

3. Federal Courts ⇐723

When addressing mootness, Court of Appeals determines whether judicial activity remains necessary.

4. Federal Courts ⇐723

Three exceptions to mootness doctrine exist: issues are capable of repetition yet evading review; appellant has taken all steps necessary to perfect appeal and to preserve status quo; and trial court's order will have possible collateral legal consequences.

5. Federal Courts ⇐723

Capable of repetition, yet evading review exception to mootness doctrine applies if challenged action is of too short a duration to be fully litigated prior to its cessation, and reasonable expectation exists that same complaining party will be subject to same action again.

6. Federal Courts ⇐723

Mere hypothesis or theoretical possibility is insufficient to satisfy test for capable of repetition, yet evading review exception to mootness doctrine.

Appeal from the United States District Court for the Middle District of Florida.

Before HATCHETT and COX Circuit Judges, and HENDERSON, Senior Circuit Judge.

HATCHETT, Circuit Judge:

We dismiss this case, which at one time touched upon important first amendment issues, because the case has been rendered moot.

FACTS

Margery Wakefield and three other plaintiffs alleged that the Church of Scientology of California (the Church) committed various wrongful acts against them. On August 14, 1986, Wakefield, the other plaintiffs, and the Church entered into a settlement agreement which included provisions enjoining Wakefield and the other plaintiffs from discussing, with other than immediate family members, (1) the substance of their complaints against the Church, (2) the substance of their claims against the Church, (3) alleged wrongs the Church committed, and (4) the contents of documents returned to the Church. The district court approved the settlement agreement, sealed the court files, and dismissed the case with prejudice. The dismissal order specifically gave the court jurisdiction to enforce the settlement terms. Nonetheless, Wakefield publicly violated the settlement agreement's confidentiality provisions.

In 1987, both the Church and Wakefield filed motions to enforce the settlement agreement. The district court requested that a magistrate judge address whether either party had violated the settlement agreement. On September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefield had violated the settlement agreement, and the Church had fully complied with the agreement's terms and conditions. On November 3, 1988, the Times Publishing Company (the Times), which publishes the *St. Petersburg Times*, moved to intervene in this lawsuit, to unseal the court files, and to gain access to any contempt hearings. In its motions, the Times alleged that the sealed court records and closed proceedings violated its and the public's constitutional and common law rights of access to judicial proceedings and records. In opposing the motions, the Church argued that they were untimely and barred by laches. On May 16, 1989, the district court adopted the magistrate judge's report, issued a preliminary and permanent injunction against Wakefield, and referred the Times's motion to intervene to the magistrate judge.

Notwithstanding the court's injunction, Wakefield continued to publicize the lawsuit. Thus, on July 18, 1989, the Church sought orders to show cause why Wakefield should not be held in civil and criminal contempt. The Church also sought damages, costs, and attorney's fees. To support its requests, the Church submitted excerpts of newspaper, television, and radio interviews attributed to Wakefield.

On August 15, 1989, the magistrate judge submitted a report and recommendation addressing Times's motion to intervene. He recommended that absent a compelling reason, all future proceedings and the court files, except for documents pertaining to the settlement, should be open and that Times be allowed to intervene. Due to events discussed later in this opinion, the district court has not issued a final order on these issues.

The district court scheduled an evidentiary hearing to address the Church's contempt motion. As witnesses at the hearing, the Church subpoenaed reporters for the *St. Petersburg Times* and the *Tampa Tribune*. Consequently, the Times, and the Tribune Company, which publishes the *Tampa Tribune* (the newspapers), filed motions for access to hearings, pleadings, proceedings, and records related to the contempt hearings in order to determine if their reporters' qualified privilege prevented them from being compelled to testify.

PROCEDURAL HISTORY

On September 11, 1989, the district court held an *in camera* proceeding to rule on the newspapers' motions. The district court denied the newspapers' motions for access to the hearings because the Church subpoenaed the reporters only to establish the source and accuracy of the statements attributed to Wakefield. The district court also held that the reporters waived any privilege by publicly attributing the statements to Wakefield.

In considering the newspapers' motions, the district court stated, "due to the plaintiff's complete and utter disregard of prior orders of this court, the court concludes that any restriction short of complete closure would be ineffective." It further held that "[p]ublicity of a private crusade has become her end, not the fair adjudication of the parties' dispute. In doing so, plaintiff is stealing the court's resources from other meritorious cases." Thus, the district court closed the contempt proceedings to the public and the press referring further proceedings to a United States Magistrate Judge. The magistrate judge began contempt hearings on September 11, 1989.

On September 18, 1989, the newspapers filed a Notice of Appeal, a Motion for Expedited Appeal, and a Motion for Stay Pending Appeal. On September 29, 1989, this court granted expedited appeal, but denied the newspapers' emergency motion for a stay of the contempt proceedings pending resolution of the expedited appeal.

On appeal, the newspapers argued that the closure violated their first amendment and common law rights of access to judicial proceedings. They contended that the public's right of access outweighs the rationale for keeping the settlement agreement confidential. The Church contended that Wakefield's "open and defiant contumacious conduct" mandated closure and that the newspapers did not enjoy an absolute constitutional or common law right of access to civil proceedings.

During our first oral argument, we learned that the newspapers had never requested the district court to allow access to the contempt hearing transcripts. Since the hearings had been completed before oral argument, we issued a November 17, 1989, order which temporarily remanded the case to the district court for the limited purpose of allowing the newspapers to seek access to the contempt hearing transcripts. The order further instructed the district court to rule on such a request "within a reasonable time."

On June 25, 1990, eight months after the last contempt hearing, the magistrate judge submitted a report and recommendation which concluded that Wakefield had willfully violated the court's injunction. He further held that while a civil contempt finding could be appropriate, he suggested the case be referred to the United States Attorney's office for prosecution on the criminal contempt charges. The district court has not issued a final order addressing whether Wakefield is in civil or criminal contempt.

Furthermore, almost a year after our temporary remand, the district court had not ruled on the newspapers' requests for access to the contempt hearing transcripts. Thus, the newspapers filed a motion requesting that this court clarify the "reasonable time" language in the November 17, 1989, order. In order to speed finalization of this matter, this court denied the clarification motion, but issued an order stating, "[a]fter December 3, 1990, this court will entertain a request for relief addressing the delay that has occurred since our remand to the district court provided that relief has been sought." After this clear signal for action, the district court issued a November 21, 1990, order unsealing the civil contempt proceeding transcripts, except for those portions which disclosed the settlement agreement terms.

On March 21, 1991, the newspapers filed a motion requesting a second oral argument, which the Church opposed. On April 18, 1991, we granted the newspapers' motions for a second oral argument, instructing the parties to address (1) whether the case was moot, (2) whether a case or controversy remained, and (3) whether a reasonable possibility of settlement existed.

ISSUE

The sole issue we discuss is whether this case is moot.

CONTENTIONS

The newspapers argue that this case is not moot because the court can grant relief which will affect the parties by ordering release of all the judicial documents relating to the contempt hearing and the unreleased transcript pages.

The Church contends that this case is moot and does not present a case or controversy which this court may address. It emphasizes that the newspapers initially sought access to the proceedings to represent their reporters, then under subpoena. It argues that this aspect of the case is absolutely moot because the Church released the reporters from their subpoenas.

DISCUSSION

[1, 2] This case, at its beginning, presented an interesting and important issue: under what circumstances may civil judicial proceedings be closed to the public and the press? Unfortunately, the newspapers did not prevail in their efforts to halt the proceedings; this court denied their motions to stay the proceedings pending the expedited appeal. The newspapers argue that we should address whether a constitutional right of access to civil proceedings exists. To do so, however, would constitute an advisory opinion. The hearing that is the subject of this case terminated almost two years ago. Although the newspapers have an interest in the constitutional question, perhaps for future cases, no "live" case or controversy remains in this case. The hearings have been completed, and the newspapers have been given the hearing transcripts.[1]

[3] When addressing mootness, we determine whether judicial activity remains necessary. *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 n. 10 (1975). "A case becomes moot, and therefore, nonjusticiable, as involving a case or controversy, 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *B & B Chemical Co. v. United States E.P.A.*, 806 F.2d 987, 989 (11th Cir.1986) (quoting *United States v. Geraghty*, 445 U.S. 388, 396, 100 S.Ct. 1202, 1208, 63 L.Ed.2d 479 (1980)).

[4] Three exceptions to the mootness doctrine exist: (1) the issues are capable of repetition, yet evading review; (2) an appellant has taken all steps necessary to perfect the appeal and to preserve the status quo, and (3) the trial court's order will have possible collateral legal consequences. *B & B Chemical Co.*, 806 F.2d at 990.

The newspapers argue that this case falls within the "capable of repetition yet evading review" mootness exception. They argue that a case is not moot if this court can grant relief that affects the interested parties. *Airline Pilots Association v. U.A.L. Corp.*, 897 F.2d 1394 (7th Cir.1990); *Wilson v. U.S. Department of Interior*, 799 F.2d 591 (9th Cir.1986). Thus, they assert that we should order the release of all the judicial documents related to the contempt hearing and the unreleased transcript pages. In their view, these documents are essential so that the public can understand what happened to Wakefield.

[5] The newspapers do not meet the exceptions' two conditions in order for the capable of repetition, yet evading review exception to apply: (1) the challenged action must be of too short a duration to be fully litigated prior to its cessation, and (2) a reasonable expectation must exist that the same complaining party will be subject to the same action again. *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 348, 46 L.Ed.2d 350 (1975).

As an example of the action's short duration, the newspapers assert that they acted promptly by filing during the contempt proceeding's adjournment a motion for a stay pending the appeal of the district court's closure. The record refutes this assertion. The underlying case has been in the federal court system since November 29, 1982. Even prior to the 1986 closure, the Times reported on the Wakefield case, but not until 1988, did Times seek to intervene. Additionally, the newspapers did not appeal the closure order until the contempt hearing had been adjourned for a continuance. These facts refute the newspapers' assertions of the action's short duration.

Likewise, the newspapers cannot satisfy the second condition. In addressing the

1. It is also noteworthy that the newspapers have changed their claims as the case has progressed. They first sought access on constitutional and common law grounds, then they sought access to protect their reporters from compelled testimony. Finally, with full knowledge that the hearings had been completed, the newspapers never sought the hearing transcripts until prompted to do so by this court. Now, with all but eleven pages of the hearing transcript, the newspapers seek the eleven pages on constitutional and common law grounds. Many of the theories presented to this court were never presented to the district court. Parties may make alternative claims, may change claims, may sometimes file inconsistent claims, but parties may not do so in the appellate court. This court reviews the case tried in the district court; it does not fix ever-changing theories parties fashion during the appellate process.

second condition, the newspapers argue that if this court does not offer judicial guidance, a "reasonable expectation" exists that this controversy will occur again. They specifically state that they "continue to expect and suspect that secret church proceedings are being or will be held," and suspect that the Church will bring contempt proceedings against the other plaintiffs. The record does not support these suspicions.

[6] This case involves unique circumstances which are not easily repeated. Wakefield's constant disregard and misuse of the judicial process mandated partial closure. Since Wakefield's contempt hearing concluded, the Church has not instituted nor has the district court conducted any additional contempt hearings, show cause hearings, or *in camera* proceedings. Furthermore, nothing indicates that the Church contemplates these actions. Although the newspapers' suspicions that secret church and contempt proceedings will occur constitute a theoretical possibility, a mere hypothesis or theoretical possibility is insufficient to satisfy the test stated in *Weinstein*. *Morgan v. Roberts*, 702 F.2d 945, 947 (11th Cir.1983). Thus, no "reasonable expectation" exists that this controversy will occur again.[2]

The newspapers' interest in the important constitutional issue which was once alive in this case is understandable. Nevertheless, we must wait for another case with a current controversy, and with a well-developed record to address the issue. The fact that much of the delay in this case is attributable to a busy and overburdened federal district court is unfortunate.

Because the newspapers cannot satisfy the capable of repetition, yet evading review requirements, this case is moot. Accordingly, this case is dismissed.[3]

DISMISSED.

2. As earlier noted, the hearings were not halted because the newspapers did not prevail on their motions for stay pending appeal. We must assume that in the proper cases stays will be granted.

3. We express no opinion on whether the remaining eleven pages of the transcripts may properly be sought in another federal lawsuit.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On September 11, 1991, I caused to be served the foregoing document described as NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Gerald Armstrong
707 Fawn Drive
Sleepy Hollow, California 94960

Toby L. Plevin
Attorney at Law
10700 Santa Monica Blvd.
Suite 4300
Westwood, CA 90025

Los Angeles Superior Court
111 N. Hill Street
Los Angeles CA 90012

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on September 11, 1991, at Hollywood, California.

Helena K. Kobrin